



GSA Federal Acquisition Service

May 9, 2012

FAS INSTRUCTIONAL LETTER 2012-08**MEMORANDUM FOR ALL FAS ACQUISITION ACTIVITIES**

FROM:

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ASSISTANT COMMISSIONER
OFFICE OF ACQUISITION MANAGEMENT (QV)

A blue ink signature of Houston W. Taylor is written over the text of his title.

SUBJECT:

Implementation of the Updated Size Standards for North
American Industry Classification System (NAICS) Sector
54 Professional, Technical, and Scientific Services

1. Purpose. The purpose of this Instructional Letter (IL) is to provide guidance on the implementation of updated size standards associated with the North American Industry Classification System (NAICS) Sector 54 Professional, Technical, and Scientific Services.
2. Background. To determine eligibility for Federal small business assistance programs, the Small Business Administration (SBA) establishes small business size definitions (referred to as size standards) for private sector industries in the United States. Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, in particular, that they do not reflect changes in the Federal contracting marketplace and industry structure. The last comprehensive review of size standards occurred during the late 1970s and early 1980s.

On September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act), Public Law 111-240. The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. As part of this review, the SBA reviewed all receipts based small business size standards in NAICS Sector 54, Professional, Technical, and Scientific Services, to determine whether they should be retained or revised. Based on the review, the SBA has increased 37 small business size standards for 34 industries and three sub-industries in NAICS Sector 54, Professional, Technical, and Scientific Services.

3. Effective Date. Date of signature.
4. Termination Date. This IL remains effective until it is cancelled.
5. Applicability. This IL applies to all GSA/FAS acquisition activities awarding and administering Federal Supply Schedule (FSS) contracts, Governmentwide Acquisition Contracts (GWACs), and Multi-Agency Contracts (MACs).

6. Reference Regulations. [SBA Final Rule Small Business Size Standards: Professional, Technical, and Scientific Services; FAR 19.301 Representations and rerepresentations](#)

7. Instructions/Procedures.

I. Federal Supply Schedules

A. Solicitation Refresh

[only those solicitations that include NAICS codes from Sector 54]

- i. Solicitations must be refreshed in the next regularly scheduled refresh window in accordance with [IL 2011-04, Federal Supply Schedule \(FSS\) Solicitation Refresh Management](#) to include the updated size standards associated with the NAICS codes in Sector 54. This update does not require the 1649 Process as described in [IL 2011-08](#).

B. In-House Offers

- i. For eOffers in-house at time of solicitation refresh, the Contracting Officer shall direct the offeror to go back into the eOffer system and “accept” the latest refresh. Offerors will also have the opportunity to withdraw their offers.
- ii. For in-house offers submitted under the pre-March 12, 2012 size standards: in order for the offeror to represent as a small business in accordance with the new size standard, the offeror must rerepresent size in their Final Proposal Revision (FPR). The offeror should also be instructed to update their ORCA and CCR records to reflect business size under the new size standard(s). The Contracting Officer shall use the size representation in the FPR, along with current ORCA and CCR information, when determining business size for the contract. The Contracting Officer shall use the size standard in effect at time of size representation and not use the size standard listed in the solicitation.
- iii. For in-house offers submitted after March 12, 2012 and under the updated size standard: No action is required.

C. Post-Award

- i. Mass Mod: All affected Schedule contracts shall be modified to incorporate the updated size standards. This shall be accomplished through a typical mass modification that is issued from SWS following a solicitation refresh. There is no need for a separate modification. *However, the effective date for the new size standards is to be March 12, 2012 and not the date that the modification is executed.*
- ii. Re-representation modification
 - a. Contractors that were initially awarded as a “small business” under their Schedule contract can choose to re-represent at any time as a result of the updated size standards.

b. Contractors that were initially awarded as “other than small business” under their Schedule contract can only re-represent if they now qualify as a small business under the updated size standards AND under one of the following three conditions:

1. Within 30 days of a novation agreement; or
2. Within 30 days after a merger or acquisition; or
3. Within 60 to 120 days prior to the exercise of an option.

c. The Contracting Officer shall advise contractors that their CCR record must be current prior to seeking a re-representation modification.

iii. Option

a. For contractors that rerepresented prior to March 12 as part of the option process and whose next option period does not/did not commence (regardless of the when the modification exercising the option was actually executed) until after March 12:

1. The Contracting Officer shall allow the contractor to rerepresent again under the new size standard and apply this latest size rerepresentation to the option period.
2. The Contracting Officer shall advise contractors that their CCR record must be current prior to seeking a re-representation modification.

b. For contractors that rerepresented prior to March 12 as part of the option process but whose option has yet to be exercised:

1. The Contracting Officer shall allow the contractor to rerepresent again under the new size standard and apply this latest size rerepresentation for the upcoming option.
2. The Contracting Officer shall advise contractors that their CCR record must be current prior to seeking a re-representation modification.

II. Governmentwide Acquisition Contracts (GWACs) and Multi-Agency Contracts (MACs)

A. Contract Modification (e.g. re-representation):

i. Contractors that were initially awarded as a “small business” under their GWAC/MAC can choose to re-represent at any time as a result of the updated size standards.

ii. Contractors that were initially awarded as “other than small business” under their GWAC/MAC can only re-represent if they now qualify as a small business under

the updated size standards AND under one of the following three conditions:

- a) Within 30 days of a novation agreement; or
- b) Within 30 days after a merger or acquisition; or
- c) Within 60 to 120 days prior to the exercise of an option.

III. Existing Open Market Contracts (contracts awarded under FAR Parts 12, 13, 14, and 15)

A. Contract Modification (e.g. re-representation):

- i. Contractors that were initially awarded as a “small business” under these contracts can choose to re-represent at any time as a result of the updated size standards.
- ii. Contractors that were initially awarded as “other than small business” under these contracts can only re-represent if they now qualify as a small business under the updated size standards AND under one of the following two conditions:
 - a) Within 30 days of a novation agreement; or
 - b) Within 30 days after a merger or acquisition

8. Questions and Answers.

Q1. Does a contractor have to wait for their Schedule contract to be modified to reflect the new size standard in order to re-represent under the new size standard?

A1. No. In accordance with FAR [19.301-2\(c\)](#) and [19.301-3\(b\)](#), contractors re-represent based on the size standard *in effect* at the time of re-representation that corresponds to the NAICS code assigned to the contract. The new size standard became *effective* March 12, 2012.

Q2. Why can an in-house offeror who was a large under the “old” size standard but would be a small under the new size standard rerepresent in the FPR instead of having to withdraw and resubmit their offer?

A2. In accordance with SBA Regulations (§ [121.404](#)), size is determined when a company submits its size representation as part of its *initial offer which includes price*. This size representation by the offeror is made via the ORCA and CCR information provided as part of the offer. A Contracting Officer is supposed to take into account the ORCA and CCR information when determining what business size to assign at award (e.g. “CO determined business size”). If information in CCR and/or ORCA is found to be outdated, the Contracting Officer should advise the offeror to update the information so that the Contracting Officer has the most current information available for use in determining business size for that contract.

Note: Unlike rerepresentation modifications, size is assigned to a contract at award based on what the Contracting Officer determines the size to be, not what is in CCR at time of award. At award, the size that shows up in GSA Advantage and eLibrary for a particular

contract is what was chosen in the “CO determ Bus Size” field, not what was in CCR at time of offer submission or contract award.

In order to better document this final size determination made by the Contracting Officer at time of award, this IL is requiring that any offeror whose size status changed because of the updated size standards rerepresent in their Final Proposal Revision (FPR). The size representation in the FPR is meant to explain any discrepancy between the size information submitted in the offer and the final size determination made by a Contracting Officer at time of award. A FPR is considered part of the “initial offer” and it includes pricing. In accordance with [IL 2011-02, Mandating the Use of Pre-Negotiation, Price Negotiation and Final Proposal Revision Templates for the Federal Supply Schedules Program](#), a FPR is required for all Schedule offers. In addition, representing size in the FPR will serve as reminder for the offeror to go into ORCA and CCR and update their information.

Q3. How are small business contractors able to re-represent at any time but large business contractors have to wait for certain conditions?

A3. FAR [19.301-2](#) covers rerepresentation requirements of small business concerns. This section lists the various times when a small business contractor must rerepresent; it does not prohibit small business contractors from rerepresenting at other times. FAR [19.301-3](#) covers rerepresentation requirements of large business concerns. This section specifies that while large business contractors are never required to rerepresent, they can choose to rerepresent but only under certain conditions. Contracting Officers can direct contractors to the [article](#) posted to Interact that lists the conditions under which a large business contractor can rerepresent.

Q4. Who updates the size standards listed in the solicitations, the solicitation owner or Office of Acquisition Management?

A4. The size standards for the NAICS codes in the solicitations are automatically pulled from a table maintained by the FAS Office of the Chief Information Officer (CIO). A system change request (SCR) has been put into the CIO to update this table. No action is necessary on either the solicitation owners’ part (i.e. no changes to the NAICS codes already assigned to the affected SINs) or Office of Acquisition Management’s part to update the size standards.

Q5. For GWACs and MACs that currently only have large business contractors, how does a rerepresentation resulting in some of the contractors attaining small business status affect the implementation/application of small business set-asides on orders?

A5. In accordance with [IL 2012-01, Discretionary Use of Small Business Set-Asides under Multiple-Award Contracts](#), all GWACs and MACs that have the potential for small business set-asides need to include the “set-aside clauses.” When determining whether small business set-aside orders are possible under a certain vehicle, check to see if there are sufficient eligible contractors (i.e. at least 2 small business contractors or other socioeconomic type) on that contract.

Q6. What happens to the subcontracting plan associated with a contract when a large business contractor rerepresents as a small business?

A6. Once a large business contractor rerepresents under the contract as a small business, a modification should be done to the contract to remove (i.e. un-incorporate) the subcontracting plan. FSS Online will change the subcontracting plan field to "N/A" following a large-to-small rerepresentation modification.

However, FPDS does not allow a change to the Subcontracting Plan field at any time after award. So the contractor will still be required to log into the electronic Subcontracting Reporting System (eSRS) each reporting period. It is recommended that the contractor enter all zeros into their report with a comment similar to the following statement: "Modification XX, issued on (date) acknowledges our company reverted from a large business to a small business and a subcontracting plan report is no longer required."

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